

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

WILLIAM NAHIM,
Appellant

v.

G1-05-90

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
William Nahim
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Hyde Park, MA 02136

Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, William Nahim (hereafter "Nahim" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority", "City" or "BPD"), bypassing him for original appointment to the position of police officer. A full hearing was held on March 21, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Nine (9) Joint exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

For the Appointing Authority:

- Edward Callahan, former Human Resources Director, Boston Police Department;
- Deputy Superintendent Marie Donahue; Boston Police Department;

For the Appellant:

- William Nahim, Appellant;
- Barbara Nahim, Appellant's wife;

I make the following findings of fact:

1. The Appellant is a thirty-three (33) year old male from Hyde Park. He graduated from West Roxbury High School in 1992 and received a bachelors degree from the University of Massachusetts at Amherst in 2000. (Testimony of Appellant; Exhibit 9)
2. The Appellant has been married for four (4) years and has two children. (Testimony of Appellant)
3. The Appellant has been employed by the Massachusetts Department of Correction for the past two years. (Testimony of Appellant)
4. At the time he filed his application for employment with the Boston Police Department, he was employed at the Home Depot in West Roxbury. (Testimony of Appellant; Exhibit 9)
5. The Appellant took an open examination for the position of police officer. (Stipulated Fact)

6. On April 20, 2004, the Appellant's name appeared on Certification 240343 for the position of police officer for the Boston Police Department. (Stipulated Fact)
7. The Boston Police Department filled 38 police officer positions from Certification 240343. Nine (9) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)
8. On September 7, 2004, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reasons: a) On March 1, 1993, Mr. Nahim was criminally charged with Assault and Battery upon his then-girlfriend. According to the incident report, his then-girlfriend indicated that Mr. Nahim hit her in the face, head, mouth (loosening teeth), ripped her shirt and threatened to kill her. The Appellant's then-girlfriend indicated that this assault was not the first such incident. This matter was continued without a finding until April 29, 1994 and ultimately dismissed; b) the Appellant's then-girlfriend sought and was granted a 209A Abuse Prevention Order against the Appellant on March 1, 1993 and the order was extended for one year; c) a problematic driving history including numerous moving violations, which resulted in the Appellant having his driver's license suspended in July of 1993. (Exhibit 1; Testimony of Callahan & Donahue)

1993 Assault and Battery and Abuse Prevention Order

9. Exhibit 3 is the Boston Police Department incident report regarding the above-referenced 1993 assault and battery. According to the police officer who completed the incident report, two officers responded to a report of assault and battery in Roslindale on February 26, 1993. Upon arrival, the officers spoke to the Appellant's

then-girlfriend who stated that the Appellant “hit her in the face, head and mouth (loosening teeth).” The incident reports goes on to state that, “suspect (Appellant) also ripped victim’s blouse when he threatened to kill her if she didn’t get into his car. Officers also spoke to both witnesses who said this was not the first time this occurred.”(Exhibit 3)

10. The Appellant was arrested for assault and battery and admitted to sufficient facts.

The case was Continued Without a Finding and subsequently dismissed. (Exhibit 5)

11. On March 1, 1993, as a result of the same above-referenced incident, a 209A Abuse

Prevention Order was entered against the Appellant with orders not to abuse or contact his then-girlfriend and to stay away from her residence and place of work.

The order was extended for one year after a court hearing in which the Appellant was able to testify. (Exhibit 4 and Testimony of Appellant)

12. As part of his interview process with the Boston Police Department, the Appellant

submitted a written statement addressing the above referenced events. The

Appellant’s written statement states in relevant part, “We began to argue getting into the car and she demanded that I drop her off in Roslindale Square. I told her that I

would drop her off at her house because she needed to cool down. She then began to hit me while I was driving causing me to swerve. My reaction was to backhand her to get her off me.” (Exhibit 7)

13. The above referenced statement from the Appellant goes on to state in relevant part,

“When we got to her house she exited my vehicle and then pulled up the passenger seat to let her friend...out from the back. After she closed my door (she) stuck her head in through the open passenger window and told me she had to tell me

something. I leaned closer and she spit right in my face. As she pulled out I managed to grab onto her collar and pull on it, causing her to accidentally hit her face off the top of the door by the roof.” (Exhibit 7)

14. During his testimony before the Commission, the Appellant described the above-referenced events in 1993 as an “unfortunate incident” and went on to talk about his unfair treatment in the court house after his arrest. (Testimony of Appellant)
15. The Appellant also testified that he had two restraining orders issued against his then-girlfriend. (Testimony of Appellant)

Driving Record

16. The Appellant’s driving record, which was entered as Exhibit 2, includes the following entries:

<u>Incident Date</u>	<u>Description</u>
5/9/91	Lane Violation Boston
5/9/91	Minor Traffic Boston
5/10/91	Illegal Operation Boston
7/21/91	Illegal Operation W Roxbury
7/21/91	Speeding W Roxbury
9/10/91	Failure to Stop W Roxbury
10/16/91	Impeding Operation W Roxbury
3/20/93	Speeding W Roxbury
6/10/93	Failure to Stop W Roxbury
7/29/93	Suspension 7 Surcharge Events 60 Days
10/22/96	Yield to Pedestrian Amherst
2/27/98	Failure to Stop Boston
8/5/98	Failure to Stop Brighton

17. Boston Deputy Superintendent Marie Donahue, who was Commander of the Internal Affairs Division at the time, and former BPD Human Resource Director Edward Callahan, both testified before the Commission. Both of them were members of a “roundtable” team that reviewed the Appellant’s background investigation. Both of

them expressed concern about the Appellant's "lengthy driving record" as driving is an essential function of being a patrol officer, comprising 85 – 90% of their daily schedule. Ms. Donahue, a 33-year veteran of the Boston Police Department, testified that the Appellant's driving record exhibited a complete disregard for responsible driving habits. (Testimony of Callahan and Donahue)

18. During his testimony before the Commission, the Appellant testified that he was a teenager at the time of most of the driving offenses and attributed many of the violations to the fact that he owned a sport utility vehicle. (Testimony of Appellant)
19. The Appellant's driving record, coupled with the above-referenced 1993 assault and battery and subsequent restraining order, led the roundtable team, including then-HRD Director Callahan and Deputy Superintendent Donahue to conclude that the Appellant was not fit to serve as a Boston Police Officer. Both Callahan and Donahue testified that they were deeply troubled by the above-referenced incident of domestic violence. (Testimony of Callahan and Donahue)
20. The Appellant's wife, Barbara Nahim, testified on the Appellant's behalf. She has known the Appellant for sixteen (16) years and described the Appellant as a good father and a man of integrity whose dream has always been to be a police officer. (Testimony of Barbara Nahim)
21. On February 4, 2005, the state's Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
22. On March 14, 2005, the Appellant filed a timely appeal with the Civil Service Commission regarding HRD's decision. (Stipulated Fact; Exhibit 8)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58

Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

William Nahim took and passed the civil service examination for the position of police officer. He scored high enough to rank among those individuals to be considered for appointment as a police officer to the Boston Police Department, no small feat for an applicant, such as the Appellant, who does not qualify for the absolute statutory preference afforded to veterans who take and pass the same exam. A long-time resident of Boston and a graduate of West Roxbury High School and UMASS Amherst, the Appellant is a likeable, well-mannered man with a sincere desire to serve his community as a police officer.

Unfortunately, however, the Appellant was arrested for assault and battery in 1993, a charge for which he admitted sufficient facts to warrant a guilty finding. Admission to sufficient facts is the “functional equivalent” of a guilty plea. Thus, it is correct to allow the admission into evidence in a civil action. See Davis v. Allard, 37 Mass. App. Ct. 508, 511 (1994), relying on Commonwealth v. Greene, 400 Mass. 144, 145-146 (1987).

The seriousness of the event which led to this arrest can not be understated, despite the fact that over 10 years had elapsed between the event and the time he applied for a position as a Boston police officer. According to the Appellant’s own written statement, he “backhanded” his then-girlfriend when she interfered with his driving. Again according to the Appellant’s own statement, he “grabbed onto (his then-girlfriend’s)

collar and pull(ed) on it, causing her to accidentally hit her face off the top of the door by the roof” after she allegedly spit at him.

The Appellant also has a lengthy driving record for which he still fails to accept responsibility, inexplicably attributing his driving offenses to the fact that he owned a sport utility vehicle as a teenager.

After considering all the testimony and evidence in the record, I conclude that the Boston Police Department had sound and sufficient reasons for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission’s intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-05-90 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin and Marquis, Commissioners [Taylor, Commissioner – Absent]) on March 28, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission’s order or decision.

Notice:
William Nahim
Tsuyoshi Fukuda, Esq.
John Marra, Esq.